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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/809,288	03/16/2001	Ivar Mortensen	Q63443	4961

7590 01/07/2005

SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
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WASHINGTON, DC 20037-3213

EXAMINER

CRAVER, CHARLES R

ART UNIT	PAPER NUMBER
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2682

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/809,288

Applicant(s)

MORTENSEN ET AL.

Examiner

Charles R Craver

Art Unit

2682

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached action.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 10-12-04 have been fully considered but they are not persuasive.

Regarding Sawyer, the examiner notes that Sawyer lacks the teaching of individual services. As to Paramenter, Paramenter discloses communications between a base station (satellite) and mobile station including the variable power services. While the instant claims mention a base station, it is not stated that the base station is a terrestrial base station, and Paramenter discloses a cellular system. Second, channel power control is present in satellite systems, as demonstrated by Paramenter, among others. Further, while Paramenter discloses that the output power may stay constant as long as the number of channels used remains constant, the Paramenter reference is not used to teach a variable power level, such is established by Sawyer. Paramenter is used merely to show the utility of different maximum and minimum power levels for service in a mobile cellular device, in which the use of a variable power level is already demonstrated by Sawyer. Paramenter is not combined as a whole with Sawyer; one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Conclusion

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
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Or faxed to:

(703) 872-9306 for both formal and informal/draft communications, labeled
as such.

Hand delivered responses should be brought to Crystal Plaza II, 200 20th
St S, Arlington VA, first floor lobby.

Any inquiry concerning this or earlier communications from the examiner should
be directed to examiner Charles Craver at (703) 305-3965.

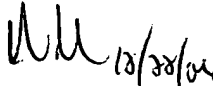
If attempts to reach the examiner are unsuccessful, the examiner's supervisor,
Vivian Chin, can be reached at (703) 308-6739.

Any inquiry of a general nature or relating to the status of this application should
be directed to the Group receptionist at (703) 305-4700.

CC

C.Craver

December 22, 2004


12/22/04
CHARLES CRAVER
PRIMARY EXAMINER